

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Truth-in-Billing
and
Billing Format

CC Docket No. 98-170

DOCKET FILE COPY ORIGINAL

Petition for Temporary, Limited Waiver

North Dakota Telephone Company ("North Dakota") and Dakota Central Telecommunications ("Dakota Central") (collectively the "Petitioners"),¹ by counsel, hereby seek temporary, limited waiver of the Truth-in-Billing ("TIB") requirements established by the Federal Communications Commission ("Commission" or "FCC") in its First Report and Order and Further Notice of Proposed Rulemaking in the above-captioned matter.² Specifically, the Petitioners seek temporary waiver of the requirements of Sections 64.2401(a)(1) and (2) regarding the name of and separating charges by service provider (the "TIB Separate Provider Requirements") and Section 64.2401(d) regarding disclosure of inquiry contacts (the "TIB Inquiry Contact Requirement")(collectively, the "TIB Requirements").³ The Petitioners seek this waiver until

¹ Attachment A contains the declaration of David Dircks, General Manager of North Dakota Telephone Company and Keith Larson, Chief Financial Officer of Dakota Central Telecommunications. The declarations bear facsimile signatures. The original signed declarations will be filed upon receipt by counsel.

² In the Matter of Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, FCC 99-72, released May 11, 1999, 64 Fed. Reg. 34488 (June 25, 1999)("TIB Order"); Errata, CC Docket No. 98-170, DA 99-2092, released October 6, 1999.

³ In pertinent part, 47 C.F.R. § 64.2401(a)(1) requires that the name of the service provider "associated with each charge must be clearly identified on the telephone bill" and 47

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April 1, 2000.

North Dakota is a member of the United States Telecom Association ("USTA"); Dakota Central is not a member of USTA. The Petitioners recognize that a pending Petition filed by USTA⁴ seeks similar relief for USTA member companies, and would not otherwise cover Dakota Central unless the relief sought was applied to all carriers as USTA has suggested.⁵ Moreover, the Petitioners recognize that a pending Joint Petition filed by the National Exchange Carrier Association, Inc., the National Telephone Cooperative Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies, Inc. (collectively the "Associations") also seeks similar relief for their member companies. Accordingly, in the event that action on the USTA Petition and/or the Associations' Petition does not grant the extent of the relief requested herein, the Petitioners request a waiver of the TIB Requirements until April 1, 2000.

C.F.R. § 2401(a)(2) states that "[w]here charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider. . . ." 47 C.F.R. § 64.2401(d) states, in turn, that:

Telephone bills must contain clear and conspicuous disclosure of any information that the customer may need to make inquiries about, or contest charges, on the bill. Common carriers must prominently display on each bill a toll-free number or numbers by which customers may inquire or dispute any charge contained on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided that such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve consumer complaints on the carrier's behalf. Each carrier must make its business address available upon request to consumers through its toll-free number.

⁴ See Public Notice, DA 99-1616, released August 13, 1999.

⁵ See Reply Comments of USTA, CC Docket No. 98-170, filed September 10, 1999 at 2.

For the reasons stated below, the practical problems and existing limitations confronting the Petitioners associated with implementing the TIB Requirements make compliance by the November 12, 1999 effective date infeasible.⁶ Until the requested waiver expires, however, the Petitioners will continue to work with their toll billing vendor and clearinghouse to ensure that all necessary information is provided, processed, and tested in order to comply with the TIB Requirements. Moreover, even after the waiver expires, the Petitioners' customer representatives will continue to provide assistance to customers with questions concerning charges from particular carriers. The Petitioners respectfully submit that these actions will ensure that the underlying public interest objectives of the TIB Requirements will be advanced during the time that the requested waiver is in effect.

I. Background

North Dakota provides exchange and exchange access services to approximately 18,823 lines in North Dakota. Dakota Central provides exchange and exchange access services to approximately 5,200 in North Dakota. Each Petitioner is a rural telephone company under the Communications Act of 1934, as amended. Each Petitioner uses NCDC as its billing vendor. Following the release of the TIB Order, the Petitioners contacted NCDC to discuss activities that would be necessary to ensure the Petitioners's TIB compliance. During this time, the Petitioners have also been concentrating their efforts on Year 2000 issues. NCDC has informed the Petitioners that, while its software is capable of processing the necessary information and rendering a toll bill in compliance with the TIB Requirements, it depends upon clearinghouses to

⁶ See 64 Fed. Reg. 55163 (Oct. 12, 1999); see also Public Notice, DA 99-2030 (Sept. 30, 1999) and Public Notice, DA 99-1789 (Sept. 2, 1999).

make all necessary information available. The clearinghouses, in turn, depend upon their carriers and message providers to submit such information.

The need for the waiver of the TIB Requirements arises from the billing services that the Petitioners render to casual calling and alternate service providers (collectively referred to as "AOS providers"), i.e., carriers other than the presubscribed "1+" carrier of the customer.⁷ Specifically, NCDC, on behalf of the Petitioners, receives data from the AOS provider's clearinghouse, which, in turn, are aggregated by NCDC in one section of the Petitioners' bills. This bill section may identify one or, at times, several different AOS providers based on the customer's decision to make a casual call or to use an alternative service provider in a given billing cycle. The charges that the Petitioners receive are sorted by customer, by date and time of that customer's usage, and by AOS provider, and in most instances, the toll bills that the Petitioners receive from NCDC place an AOS service provider's toll free number on the bill. However, where the records involve a "sub-CIC"⁸ of that AOS provider,⁹ NCDC has informed the Petitioners that not all clearinghouses provide the name of such an AOS provider or its toll free number to enable NCDC's software to process the information and place it on the bill.

⁷ Although the Petitioners typically have the authority to issue credits to customers for AOS charges, the AOS providers may, independently, seek payment of those charges from customers. Moreover, the Petitioners note that they are not "fully authorized to resolve consumer complaints on the carrier's behalf." 47 C.F.R. § 64.2401(d). Accordingly, the Petitioners request this waiver of the TIB Inquiry Contact Requirement. The Petitioners also note that, in their experience, customer inquiries regarding AOS provider charges are minimal.

⁸ A "CIC" is the Carrier Identification Code assigned to a specific carrier. The use of "sub-CICs" allows other providers to share the CIC.

⁹ Based on the Petitioners's experience, the majority of its customers do not make calls carried by an AOS provider.

Accordingly, the Petitioners request this waiver until April 1, 2000. A waiver of the TIB Requirements until April 1, 2000 will help to ensure that all TIB efforts required by the Petitioners are coordinated efficiently.

II. Good Cause Exists for and the Public Interest will be Served by a Grant of this Limited Waiver

Based on these facts and circumstances, the Petitioners respectfully submit that good cause exists for a grant of this limited waiver, and that the public interest will be served by such action. As demonstrated herein, the Petitioners will not be able to meet the TIB Requirements by November 12, 1999.¹⁰ Moreover, even assuming the receipt of all necessary information from their clearinghouse and processing of the information by their vendor, the Petitioners would not be able to successfully test the system by November 12, 1999. The Petitioners anticipate, however, that compliance with the TIB Requirements should be possible by April 1, 2000. Accordingly, for the reasons stated, good cause exists for this waiver.¹¹

The Petitioners also respectfully submit that the public interest would be served by grant of this request. First, the Commission has recognized the need to balance the implementation of

¹⁰ See n.6, supra.

¹¹ "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative. Northeast Cellular Telephone Co., L.P. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

new regulatory directives which affect computerized systems with on-going Year 2000 activities.¹² The system capabilities to be implemented by NCDC clearly fall into this Commission-defined category. The Commission's concerns regarding utilization of its Year 2000 Policy Statement to "'forestall' or 'roll back' disfavored regulations, or use this policy for purposes of competitive advantage"¹³ are not applicable here. The Petitioners are working with their billing vendor toward TIB compliance and seek only a limited extension of time that is otherwise consistent with the underlying objectives which justified the Commission-prescribed compliance date of certain other TIB rules. Accordingly, there is no basis to conclude that the Petitioners are attempting to "forestall" or "roll back" disfavored regulations. In addition, there is no "competitive advantage" associated with this request. A grant of this waiver does not affect a competitor of the Petitioners; rather it allows an interim measure to be implemented that allows continuation of existing billing arrangements for other carriers in a manner consistent with the status of the overall TIB compliance efforts by the Petitioners.

Second, the Commission has already determined that the April 1, 2000 date is appropriate for implementing other TIB rules.¹⁴ Accordingly, the ability of NCDC and the Petitioners to continue to work toward the April 1, 2000 implementation date for all TIB rules would ensure efficiency and continuity in the necessary overall billing system enhancements and capabilities

¹² See In the Matter of Minimizing Regulatory and Information Technology Requirements That Could Adversely Affect Progress Fixing the Year 2000 Date Conversion Problem, Year 2000 Network Stabilization Policy Statement, FCC 99-272, released October 4, 1999 ("Year 2000 Policy Statement") at para. 15.

¹³ Id. at para. 16.

¹⁴ See n.7, supra.

without incurring unnecessary expenditures or jeopardizing Year 2000 compliance issues.

Third, the underlying goal of the TIB Requirements -- the ability of a customer to identify a carrier and make inquiry concerning a charge -- would not be frustrated by a grant of the requested waiver. As is done today, even after the requested waiver expires, each Petitioner will continue to provide its local telephone number on the bill in order to allow customers to contact each Petitioner about charges. Likewise, when a customer questions an AOS provider charge, The Petitioners will, at the customer's option, provide the AOS provider's toll free number or will seek to establish a three-way conference call with the AOS provider (or its billing clearinghouse) in order that the customer may address his/her concern about a charge. Accordingly, the goal of the TIB Requirements will be advanced. Waiver of the TIB Requirements as requested herein will merely maintain the status quo until such time as the billing system modifications are made and successfully tested.

Finally, the Petitioners note that, in the absence of this limited waiver of the TIB Requirements, their ability to bill for isolated customer-originated traffic on behalf of AOS providers would be in jeopardy. Facing the risk of non-compliance with the TIB Requirements, the Petitioners may be forced to consider terminating their billing relationship with each of these providers. This, in turn, may increase the cost to various providers for their respective billing, thereby inhibiting the continued development of a competitive marketplace for such services.

Even assuming that harm to the public interest is present, that harm does not outweigh the public interest benefits arising from a grant of this request. As indicated, concerns expressed by the customers of the Petitioners regarding AOS provider charges have been minimal. Moreover, the Petitioners anticipate that their experience will not change during the time that the requested

waiver is in place.

III. Conclusion

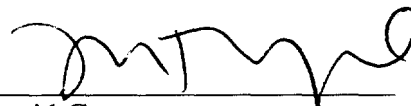
Because the Petitioners are technically incapable of complying with the TIB Requirements by November 12, 1999, a grant of this request until April 1, 2000 should ensure implementation of the TIB Requirements is completed in an efficient manner, while avoiding unnecessary expense or raising additional Year 2000 compliance issues. At the same time, the consumer goals of the TIB Requirements will not be frustrated by a grant of this request. Rather, such goals will be furthered by the Petitioners as they continue to provide customer assistance and responsiveness when questions are received regarding charges from service providers.

Accordingly, in the event that action on the USTA Petition and/or the Associations' Petition does not grant the extent of the relief requested herein, the Petitioners request a waiver of the requirements of 47 C.F.R. §§ 64.2401(a)(1), 64.2401(a)(2) and 64.2401(d) until April 1, 2000.

Respectfully submitted,

**North Dakota Telephone Company
Dakota Central Telecommunications**

By



David Cosson
Thomas J. Moorman
Margaret Nyland

Their Attorneys

Kraskin, Lesse & Cosson, LLP
2120 L Street, N. W., Suite 520
Washington, D.C. 20037
202/296-8890

November 12, 1999

Thank-you

Echelon Building II, Suite 200
9430 Research Boulevard, Austin, Texas 78759
phone: 512-338-0473 fax: 512-346-0822

Engendale Corporate Center, Suite 310
1380 Corporate Center Curve, Eagan, Minnesota 55121
phone: 612-452-2640 fax: 612-452-1909

5360 Skidaway Drive
Alpharetta, Georgia 30022
phone: 770-569-2105 fax: 770-410-1608

Sent by: NDTC


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**Declaration of David Dircks
General Manager of
North Dakota Telephone Company**

I, David Dircks, General Manager of North Dakota Telephone Company ("NDTC"), do hereby declare under penalties of perjury that I have read the foregoing "Petition for Temporary, Limited Waiver" and the information contained therein regarding NDTC is true and accurate to the best of my knowledge, information, and belief.

Date 11/12/99


David Dircks
General Manager

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**Declaration of Keith Larson
Chief Financial Officer
Dakota Central Telecommunications**

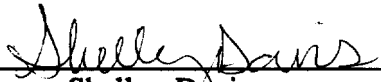
I, Keith Larson, Chief Financial Officer of Dakota Central Telecommunications ("Dakota Central"), do hereby declare under penalties of perjury that I have read the foregoing "Petition for Temporary, Limited Waiver" and the information contained therein regarding Dakota Central is true and accurate to the best of my knowledge, information, and belief.

Date 11/12/99


Keith Larson
Chief Financial Officer

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Petition for Temporary, Limited Waiver" of North Dakota Telephone Company and Dakota Central Telecommunications was served on this 12th day of November, 1999 by hand delivery to the following parties:


Shelley Davis

Lawrence Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW Room 5-C450
Washington, DC 20554

Lisa Zaina, Acting Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-B303
Washington, DC 20554

Glenn T. Reynolds, Chief
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-A847
Washington, DC 20554

David Konuch, Attorney
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C313
Washington, DC 20036

International Transcription Services
1231 20th Street, NW
Washington, DC 20554